

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-CR-43

BRADY J. POMEROY,

Defendant.

ORDER DENYING MOTION TO APPOINT COUNSEL

Defendant Brady J. Pomeroy pled guilty to conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841 and 846, and possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924. On September 8, 2017, the court sentenced him to 177 months imprisonment to be followed by 5 years of supervised release, the mandatory minimum less time in custody on related state charges, just slightly under the 15-year mandatory minimum. Pomeroy did not appeal, and the judgment became final on September 22, 2017. On March 30, 2020 Pomeroy filed a motion seeking appointment of counsel, stating that he wishes to pursue a reduction in sentence by challenging whether his firearm conviction was a crime of violence.

Pomeroy cites *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), in support of his motion. In *Dimaya*, the Court held that the residual clause of the federal criminal code's definition of "crime of violence," as incorporated into the Immigration and Nationality Act's (INA) definition of aggravated felony, was impermissibly vague, rendering the respondent's order of removal invalid. The holding has no bearing on the sentence imposed in this case. Pomeroy was convicted of

possession of a firearm in furtherance of a drug trafficking crime. That offense carries a mandatory minimum sentence of 60 months that must be served consecutively to the sentence imposed for the underlying drug trafficking offense. Pomeroy's drug offense carried a mandatory sentence of 120 months, which the court reduced to give him credit for time spent in state custody for the same offense. The 177 month sentence the court imposed is the lowest sentence legally possible. *Dimaya* has no bearing on Pomeroy's case. His motion for appointment of counsel is therefore denied.

SO ORDERED at Green Bay, Wisconsin, this 19th day of April, 2020.

s/ William C. Griesbach
WILLIAM C. GRIESBACH, District Judge
United States District Court - WIED